



EXPRESS MAIL NO. EV887984015US

PETITION FOR REVIVAL OF AN APPLICATION FOR PATENT ABANDONED UNINTENTIONALLY UNDER 37 CFR 1.137(b)	Docket Number (Optional) <b>120158.402C2</b>
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First named inventor: **Daniel R. Twardzik**

Application No.: **10/050,190**

Art Unit: **1647**

Filed: **January 15, 2002**

Examiner: **Stephen Gucker**

Title: **TGF- $\alpha$  POLYPEPTIDES, FUNCTIONAL FRAGMENTS AND METHODS OF USE THEREFOR**

Attention: Office of Petitions

**Mail Stop Petition**

Commissioner for Patents

P.O. Box 1450

Alexandria, VA 22313-1450

Fax: (571) 273-8300

NOTE: If information or assistance is needed in completing this form, please contact Petitions Information at (571) 272-3282.

The above-identified application became abandoned for failure to file a timely and proper reply to a notice or action by the United States Patent and Trademark Office. The date of abandonment is the day after the expiration date of the period set for reply in the office notice or action plus any extensions of time actually obtained.

**APPLICANT HEREBY PETITIONS FOR REVIVAL OF THIS APPLICATION**

NOTE: A grantable petition requires the following items:

- (1) Petition fee;
- (2) Reply and/or issue fee;
- (3) Terminal disclaimer with disclaimer fee - required for all utility and plant applications filed before June 8, 1995; and for all design applications; and
- (4) Statement that the entire delay was unintentional.

1. Petition fee

Small entity - fee **\$750** (37 CFR 1.17(m)). Applicant claims small entity status. See 37 CFR 1.27.

Other than small entity - fee \$ \_\_\_\_\_ (37 CFR 1.17(m))

2. Reply and/or fee

A. The reply and/or fee to the above-noted Office action in the form of \_\_\_\_\_ (identify type of reply):

has been filed previously on \_\_\_\_\_.

is enclosed herewith.

B. The issue fee and publication fee (if applicable) of \$ **1000**.

has been paid previously on \_\_\_\_\_.

is enclosed herewith.

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3. Terminal disclaimer with disclaimer fee

Since this utility/plant application was filed on or after June 8, 1995, no terminal disclaimer is required.

A terminal disclaimer (and disclaimer fee (37 CFR 1.20(d)) of \$ \_\_\_\_\_ for a small entity or \$ \_\_\_\_\_ for other than a small entity) disclaiming the required period of time is enclosed herewith (see PTO/SB/63).

4. STATEMENT: The entire delay in filing the required reply from the due date for the required reply until the filing of a grantable petition under 37 CFR 1.137(b) was unintentional. [NOTE: The United States Patent and Trademark Office may require additional information if there is a question as to whether either the abandonment or the delay in filing a petition under 37 CFR 1.137(b) was unintentional (MPEP 711.03(c), subsections (III)(C) and (D)).]

**WARNING: Information on this form may become public. Credit card information should not be included on this form. Provide credit card information and authorization on PTO-2038.**

  
\_\_\_\_\_  
Signature

May 4, 2007

Date

Stephen J. Rosenman, Ph.D.  
\_\_\_\_\_  
Typed or printed name

43,058

Registration Number, if applicable

Seed Intellectual Property Law Group PLLC

206-622-4900

Address

Telephone Number

701 Fifth Avenue, Suite 5400

Seattle, Washington 98104

Address

Enclosures:  Fee Payment

Reply

Terminal Disclaimer Form

Additional sheets containing statements establishing unintentional delay

Other: Form PTOL-85 (+1 copy)

**CERTIFICATE OF MAILING OR TRANSMISSION [37 CFR 1.8(a)]**

I hereby certify that this correspondence is being:

Deposited with the United States Postal Service on the date shown below with sufficient postage as first class mail in an envelope addressed to: **Mail Stop Petition**, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

Transmitted by facsimile on the date shown below to the United States Patent and Trademark Office at (571) 273-8300.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Typed or printed name  
of person signing certificate

PATENT



## IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicants : Daniel R. Twardzik et al.  
 Application No. : 10/050,190  
 Filed : January 15, 2002  
 For : TGF- $\alpha$  POLYPEPTIDES, FUNCTIONAL FRAGMENTS AND  
 METHODS OF USE THEREFOR

Examiner : Stephen Gucker  
 Art Unit : 1647  
 Docket No. : 120158.402C2  
 Date : May 4, 2007

Mail Stop Petition  
 Commissioner for Patents  
 P.O. Box 1450  
 Alexandria, VA 22313-1450

STATEMENT IN SUPPORT OF PETITION FOR REVIVAL UNDER 37 CFR 1.137(b)

Commissioner for Patents:

In the Petition for Revival submitted herewith, Petitioner has provided the required statement that the entire delay in filing the required reply, from the due date for the required reply until the filing of a grantable petition under 37 CFR 1.137(b), was unintentional. The undersigned states the following facts in support of the Petition for Revival of an Application for Patent Abandoned Unintentionally Under 37 CFR 1.137(b):

1. On October 1, 2004, the Office of Initial Patent Examination (OIPE) in the United States Patent and Trademark Office (PTO) received from first prior counsel in the present application a "Request for Withdrawal as Attorney or Agent Under 37 C.F.R. 1.36" dated September 28, 2004, instructing the PTO to direct future correspondence to second prior counsel, Roberta M. Picard, Esq., Corporate Counsel, Kaleidos Pharmaceuticals, Inc., 562 First Avenue South, Suite 700, Seattle, Washington, 98104.

2. On October 3, 2004, second prior counsel Roberta M. Picard relocated from Seattle, Washington, to the state of Michigan, according to an email communication received by the undersigned representative from Ms. Picard on April 25, 2007.

3. On November 4, 2004, the PTO mailed a Notice of Allowance addressed to second prior counsel Roberta M. Picard, Esq., Corporate Counsel, Kaleidos Pharmaceuticals, Inc., 562 First Avenue South, Suite 700, Seattle, Washington, 98104.

4. On June 21, 2005, at the request of Kaleidos Pharmaceuticals, Inc. ("KPI"), the undersigned representatives filed in the PTO Revocation and Substitute Powers of Attorney according to which the undersigned representatives became correspondents of record, and Statements under 37 CFR 3.73(b) executed by a KPI officer, and also recorded in the PTO the change of name of the Assignee from Stem Cell Pharmaceuticals, Inc., to Kaleidos Pharmaceuticals, Inc. For purposes of these filings, KPI provided to the undersigned representatives what was believed at the time to be the full and complete patent application prosecution file, inspection of which showed the application to be pending and the most recent paper to be the Request for Withdrawal dated September 28, 2004. For the sake of clarity, the Notice of Allowance addressed to prior counsel Ms. Picard and dated November 4, 2004, was not in the KPI file that was provided by KPI to the undersigned representatives.

5. On June 27, 2005, the undersigned representative forwarded reporting correspondence to KPI regarding the filing activities of June 21, 2005.

6. On October 13, 2005, Trustee for KPI filed a voluntary Chapter 7 petition in U.S. Bankruptcy Court for the Western District of Washington.

7. On May 16, 2006, Supervisory Examiner Janet L. Andres of the PTO left a telephonic voice message with the undersigned representative, advising that the application had been allowed and requesting a paper copy of the Sequence Listing. From this telephonic PTO communication, the undersigned representative believed that the application was pending and that a Notice of Allowance was forthcoming.

8. On May 18, 2006, the undersigned representative forwarded the requested Sequence Listing documents to Supervisory Examiner Andres via facsimile.

9. On May 18, 2006, the PTO mailed a Notice of Abandonment of the present application for failure to timely pay the required issue fee in response to the Notice of Allowance, addressed to prior counsel Roberta M. Picard, Esq., Corporate Counsel, Kaleidos Pharmaceuticals, Inc., 562 First Avenue South, Suite 700, Seattle, Washington, 98104. As with

the Notice of Allowance, this Notice of Abandonment was not received by undersigned representative, and despite the above-described submissions of June 21, 2005 by which the undersigned representative became the correspondent of record in the PTO, the undersigned representative was not made aware of the Notice of Abandonment by the PTO, nor was KPI's bankruptcy Trustee made aware of the Notice of Abandonment. A Declaration by the bankruptcy Trustee so stating is enclosed (see Declaration of Edmund J. Wood).

10. On July 28, 2006, the PTO mailed a Notice of Acceptance of Power of Attorney to the undersigned representative, in response to the undersigned representative's submission to the PTO more than one year earlier on June 21, 2005. Based on this written PTO correspondence, the undersigned representative believed that the application was pending.

11. On February 23, 2007, counsel for the KPI Trustee advised the undersigned representative that further to disposition of KPI assets following bankruptcy proceedings in U.S. Bankruptcy Court for the Western District of Washington, the present application had been sold to Applied Protein Sciences, LLC ("APS"), of Mountain View, California.

12. On March 5, 2007, in the course of a routine check of the PTO PAIRS database further to preparing the patent application file for transfer to APS, it first came to the undersigned representative's attention (a) that the PTO had mailed to second prior counsel a Notice of Allowance in this application on November 4, 2004, which Notice of Allowance had never been received by undersigned representative, and (b) that the PTO had mailed to second prior counsel a Notice of Abandonment in this application on May 18, 2006, which Notice of Abandonment had never been received by undersigned representative, such that the application status in the PTO was abandoned. APS was so notified by couriered letter from undersigned representative dated March 5, 2007. The PTO PAIRS database also showed that a Notice Regarding Change of Power of Attorney was mailed by the PTO on July 28, 2006 addressed to (second prior counsel) Roberta M. Picard, Esq., Corporate Counsel, Kaleidos Pharmaceuticals, Inc., 562 First Avenue South, Suite 700, Seattle, Washington, 98104, but was marked "RETURN TO SENDER NOT DELIVERABLE AS ADDRESSED UNABLE TO FORWARD" and returned to the USPTO Mail Center where it was received on August 9, 2006. The PTO did not

notify the undersigned representative of its receipt of this or any other undelivered correspondence that the PTO had addressed to second prior counsel.

13. On April 3, 2007, the bankruptcy Trustee for KPI assigned KPI's interest in the application to APS.

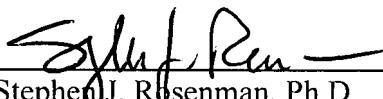
14. On April 11, 2007, APS recorded the assignment from KPI to APS in the PTO.

In view of the foregoing, Petitioner respectfully requests revival of the instant application where the record clearly shows that the abandonment was unintentional in view of the fact that the issuance of the Notice of Allowance dated November 4, 2004, and the Notice of Abandonment dated May 18, 2006, did not come to be known until March 5, 2007. The undersigned notes that the following are submitted herewith:

- (1) Petition for Revival Under 37 CFR 1.137(b);
- (2) Petition fee;
- (3) Response to Notice of Allowance and Fee(s) Due;
- (4) Issue fee payment
- (5) Declaration of Edmund J. Wood

Respectfully submitted,

SEED Intellectual Property Law Group PLLC

  
\_\_\_\_\_  
Stephen J. Rosenman, Ph.D.  
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PATENT

## IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicants : Daniel R. Twardzik et al.  
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Examiner : Stephen Gucker  
Art Unit : 1647  
Docket No. : 120158.402C2  
Date : May 3, 2007

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DECLARATION OF EDMUND J. WOOD, BANKRUPTCY TRUSTEE FOR KALEIDOS PHARMA INC., IN SUPPORT OF PETITION FOR REVIVAL UNDER 37 CFR 1.137(B)

Commissioner for Patents:

1. I am an attorney registered to practice in the state of Washington (No. 3695, admitted 9/20/65) and am a partner in the law firm of Wood & Jones, P.S., having offices at 303 North 67<sup>th</sup> Street, Seattle, Washington, 98103.

2. On October 13, 2005, I was appointed, by the U.S. Bankruptcy Court for the Western District of Washington at Seattle, as the Chapter 7 Trustee for bankruptcy proceedings (Case No. 05-26907-SJS) acting on behalf Kaleidos Pharma Inc. ("KPI", EIN 91-1719007). On October 13, 2005, as Trustee for KPI, I filed a voluntary Chapter 7 petition in the U.S. Bankruptcy Court for the Western District of Washington.

3. I served the U.S. Bankruptcy Court for the Western District of Washington at Seattle as Chapter 7 Trustee for KPI at least through April 3, 2007, the date on which KPI's interest in the above identified patent application was assigned to Applied Protein

Application No. 10/050,190  
Statement in Support of Petition Under 37 CFR 1.137(b)

Sciences LLC ("APS") of Mountain View, California, further to a disposition of KPI assets in bankruptcy proceedings that were conducted in February 2007.

4. As Chapter 7 Trustee I was aware of KPI's assets, including the U.S. patent application identified above.

5. During my service as Chapter 7 Trustee for KPI, as of February 23, 2007, I had not received, nor was I made aware of the fact that on May 18, 2006 the U.S. Patent and Trademark Office (PTO) mailed to KPI, a Notice of Abandonment in the above identified patent application for failure to timely pay the required issue fee in response to a Notice of Allowance; nor as of February 23, 2007 had I received, or been made aware of the fact that on November 4, 2004 the PTO had mailed to KPI, a Notice of Allowance in the above identified patent application.

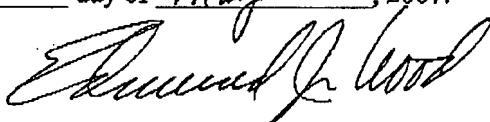
6. On April 3, 2007, in my capacity as Chapter 7 bankruptcy Trustee for KPI, KPI's interest in the above-identified application was assigned to APS.

7. In view of the foregoing, it is my belief that KPI was unaware of the Notice of Abandonment and of the Notice of Allowance, such that the entire delay from the due date for filing the required Issue Fee in response to the Notice of Allowance until the filing of a grantable petition under 37 C.F.R. 1.137(b) was unintentional.

I further declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further, that these statements were made with the knowledge that the making of willfully false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

EXECUTED this 3<sup>rd</sup> day of May, 2007.

Edmund J. Wood, Esq.  
Wood & Jones, P.S.  
303 North 67<sup>th</sup> Street  
Seattle, Washington, 98103



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